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In the

Supreme Court of the United States

OCTOBER TERM, 1967

No. 577

LAURIL M. ALLIS,

Petitioner,

v.

LOUIS ALLIS, JR. AND WESTERN FARMS, LTD.,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

In the statement of the facts of the brief filed by Petitioner, the principal facts are omitted and the principal issues are not set forth. In order to supply the omissions and correct the misstatements Respondents submit the following statement of the case.

Respondent Louis Allis, Jr. established residence in Nevada on May 7, 1963 (R. 56). On May 10, 1963 Respondent Allis conveyed the Rolling Hills Ranch to a Nevada corporation, Respondent Western Farms, Ltd. in return for all of the stock of Western Farms,

Ltd. (R. 42, 62). On June 25, 1963, Respondent Louis Allis; Jr. filed suit for divorce in Washoe County, Nevada against Petitioner and on July 12, 1963 Petitioner appeared and answered (R. 101-102). On September 28, 1964 this cause went to trial in Washoe County, Nevada (R. 55), and on October 1, 1964 at the close of Respondent's case in chief, Petitioner Lauril M. Allis filed a counterclaim for divorce, alimony, and a division of community property in Nevada and elsewhere (R. 105, 106, 55). In the prosecution of her counterclaim, Petitioner asserted an interest in the stock of Petitioner Western Farms, Ltd. as a result of the conveyance of the Rolling Hills Ranch to such corporation by Respondent Louis Allis, Jr., tracing what she asserted to be community property into the shares of stock acquired in exchange therefor (R. 62). Additionally, Petitioner claimed some type of homestead interest in the Rolling Hills Ranch (R. 63).

The Nevada trial court found that the conveyance of the Rolling Hills Ranch to Western Farms, Ltd. was valid, and was relied on by Petitioner Lauril M. Allis in her assertion of a community interest in the stock of Western Farms, Ltd. (R. 62 Findings of Fact IV.(d) (6)), and that the Rolling Hills Ranch was not homestead of Louis Allis, Jr. and Lauril M. Allis on the date of conveyance to Western Farms, Ltd. and if it had ever been a homestead it had been abandoned as a homestead long prior to its conveyance to Western Farms, Ltd. (R. 63, Finding of Fact IV.(d) (7)).

The Nevada Court therefore reached the position urged by Petitioner Lauril M. Allis that she was entitled to a community interest in the Western Farms, Ltd. stock and determined: (1) that Louis Allis, Jr. was a resident and domiciliary of the State of Wisconsin at the time he acquired the Rolling Hills Ranch (R. 61-62, Findings of Fact IV.(d)(1)(2)(3)); (2) that the Rolling Hills Ranch was acquired on May 15, 1959 with the separate property and on the separate credit of Louis Allis, Jr. (R. 62, Finding of Fact IV.(d)(4)), and paid for solely from his separate property (R. 62, Findings of Fact IV.(d)(4)); and (3) that Louis Allis, Jr. did not become a resident of the State of Texas until some time in the month of June 1959 (not about January 1, 1959 as stated in Petitioner's brief, Page 3) (R. 61-62, Finding of Fact IV.(d)(3)). Based on these findings of fact the Nevada Court concluded as a matter of law that the Rolling Hills Ranch was the sole and separate property of Respondent Louis Allis, Jr., at the time of its conveyance to Western Farms, Ltd. (R. 68, Conclusion of Law III.(d)), that such conveyance to Western Farms, Ltd. was valid and effective (R. 68, Conclusion of Law III.(d)) and that the stock of Western Farms, Ltd. was the separate property of Respondent (R. 68-69, Conclusion of Law III.(e)).

The decision of the Nevada District Court was filed December 24, 1964 (R. 46), and the Findings of Fact and Conclusions of Law and Decree were filed on Janu-

ary 15, 1965 (R. 55, 73). The Nevada Court awarded the divorce to Petitioner Lauril M. Allis and awarded her substantial alimony and all of the value of the community property less community debts (R. 73-84). On May 10, 1965 Petitioner Lauril M. Allis perfected her appeal to the Nevada Supreme Court (R. 130) and on June 16, 1965 Petitioner dismissed her appeal with prejudice by stipulation (R. 130-131).

While asserting in Nevada the validity of the conveyance on May 10, 1963 of the Rolling Hills Ranch to Western Farms, Ltd. as a part of her claim to Western Farms, Ltd. stock, Petitioner Lauril M. Allis filed this suit on October 13, 1964 in Texas (R. 13) to avoid the conveyance of the Rolling Hills Ranch to Western Farms, Ltd. and litigate again the same issues as to the separate or community nature of Rolling Hills Ranch then being litigated in Nevada (R. 4-6).

The United States District Court for the Eastern District of Texas granted summary judgment, which judgment is fully supported by any one or more of the following grounds: (1) the adjudication of the counterclaim of Petitioner by the Nevada Court that the conveyance to Western Farms, Ltd. was valid and the Rolling Hills Ranch was separate property of Respondent Allis at the time of conveyance constitutes an estoppel by judgment from the relitigation by Petitioner of the same subject matter; (2) as a matter of comity by the Texas Courts the Nevada judgment is res judicata of all matters sought to be relitigated by

Petitioner; (3) under the Constitution of the United States the judgment of the Nevada Court is res judicata and entitled to full faith and credit in the Courts of Texas; (4) Petitioner, having asserted and relied on the validity of the conveyance to Respondent Western Farms, Ltd. of the Rolling Hills Ranch in the Nevada litigation, is now judicially estopped to attack the validity of such conveyance in Texas.

The Court of Appeals for the Fifth Circuit found that the decision of the United States District Court was correct; that the Nevada Court had jurisdiction to render its judgment in this cause; and that as a matter of comity the State of Texas would recognize and apply the judgment of the Nevada Court. In reaching this conclusion, the Fifth Circuit applied the conflict of laws case authority of the courts of Texas.

ARGUMENT

There is no genuine issue of fact relating to any of these grounds, and Petitioner's brief points out none. The alleged issue of fact raised in Petitioner's Petition can be reached only if Petitioner is entitled to relitigate matters and facts already fully litigated in Nevada. The decision of the Court of Appeals does not involve the determination of a federal question, nor is the decision of the Court of Appeals in conflict with the decision of any other Court of Appeals on the same matter. Indeed, the only question before the Court was the question of the proper application of the conflict of

laws authority of the State of Texas, and although it is not clear what special or important reasons Petitioner cites for the granting of certiorari in this cause, it would appear that basic contention by Petitioner is that the decision of the Court of Appeals is in conflict with applicable Texas law. Petitioner admits there is no federal question and the lower courts have not applied the "full faith and credit clause" of the United States Constitution, Article IV, Section 1.

The fact is that as the decision of the Court of Appeals carefully points out, its decision is based on and completely consistent with the case law of the State of Texas.

In addition to *McElreath* v. *McElreath*, 162 Tex. 190, 345 S.W. 2d 722 (1961), so carefully discussed by the Court of Appeals, the following cases each almost precisely in point, have been decided by the Courts of the State of Texas, and have been cited with approval by the Supreme Court of the State of Texas. In *Hall* v. *Jones*, 54 S.W. 2d 835 (Tex. Civ. App. 1932), *no writ history*, the Plaintiff asserted in Oklahoma an interest in Texas real estate under a deed to such real estate. The Oklahoma court found that the deed was ineffective to convey title. Subsequently, Plaintiff brought suit in Texas and the Texas court recognized the Oklahoma adjudication that the deed was insufficient to pass title to Texas real estate, and held that such adjudication barred the maintenance of suit in Texas, and that Plaintiff was estopped from subsequently

litigating that question again in Texas. The court used the following language:

> "The fact must be kept steadily in mind that the Oklahoma judgment did not purport either to divest or invest the title to the property. It did not preclude or purport to preclude plaintiff in error from presenting and enforcing any other evidence of title to this property. It simply adjudicated the deed in question to be insufficient to pass title to the property involved.
>
> "It is elemental that the courts of one state have no authority or jurisdiction to determine a naked question of title to real property situated in another state, or to divest or invest the title.
>
> "But it seems to be equally well settled that the courts of one state may exercise jurisdiction, when affirmatively invoked or acquiesced in, to determine the validity or effect of a deed of conveyance of real property situated in another state so as to bind the parties to such decree, which, operating directly upon them personally, prohibits them from disputing it in another state."

The fact question in *Hall* v. *Jones* is almost identical to the fact question in the present case. In the present case the Nevada court had before it the deed being claimed under by Petitioner Lauril M. Allis in order to entitle her to an interest in corporate stock received in consideration for such deed. The court adjudicated the question of the deed's validity and of the separate or community nature of the Rolling Hills Ranch in litigation in which the Petitioner Lauril M. Allis acquiesced, and indeed cross-acted and received a di-

vorce and alimony. Under such circumstances, the adjudication is an estoppel and res judicata to this proceeding.

In *Greer* v. *Greer*, 189 S.W. 2d 104 (Tex. Civ. App. 1945) *reversed on other grounds*, 144 Tex. 528, 191 S.W. 2d 848 (1946) the Court was faced with a very similar fact situation to that in the present litigation. An Oklahoma Court in a divorce action in Oklahoma found that certain real property located in Wood County, Texas was the separate property of Rosetta Greer, and that L. C. Greer, her former husband, held title to such property in trust for her benefit as a result of the separate nature of the property. The Texas Court held that the Oklahoma judgment determining that the property in question was the separate property of Rosetta Greer was res judicata, entitled to full faith and credit under the Constitution of the United States, and that the title held by L. C. Greer was in trust for Rosetta's benefit. The Court used the following language at page 105:

> "It is observed that the Oklahoma District Court found and adjudged in substance that the 70-acre tract had been purchased and paid for out of the separate funds of Rosetta Greer, and that although the deed was taken in the name of L. C. Greer as a matter of convenience, the title was held in his name in trust for the benefit of Rosetta Greer. The transcript of the judgment roll of that court discloses that above issues were raised and joined by evidence offered by both litigants under their respective extensive pleadings in that trial and

> they had appeared in person and by counsel. Under the foregoing status, we are in accord with the trial court's action in the instant trial wherein "full faith and credit" under the provisions of Article 4, Sec. 1, of the Constitution of the United States was given above findings by the Oklahoma District Court so as to preclude L. C. Greer under the doctrine of res adjudicata from litigating in the instant trial the same issues of fact. Massie v. Watts, 6 Cranch 148, 3 L.Ed. 181; Hall v. Jones, Tex. Civ. App., 54 S.W. 2d 835; 34 C.J. p. 1137; Burnley v. Stevenson, 24 Ohio St. 474, 15 Am. Rep. 621; Bailey v. Tully, 242 Wis. 226, 7 N.W. 2d 837, 840, 145 A.L.R. 579, and cases therein collated from various states on page 585."

Although the Court of Civil Appeals holding was reversed and remanded by the Texas Supreme Court on subsequent appeal it was reversed on the sole point that the Oklahoma judgment did not describe the property sufficiently. This defect is not present in the present litigation as the decree and the findings of fact and conclusions of law of the Nevada Court at pages 58-61 and pages 76-80 of the Record reflect. The Civil Appeals opinion quoted from herein is cited with approval by the Texas Supreme Court in *McElreath v. McElreath*, 162 Tex. 190 at 204, 345 S.W. 2d 722 at 731 (1961) although vigorously attacked by the dissent.

In *Milner* v. *Schaefer*, 211 S.W. 2d 600 (Tex. Civ. App. 1948) *error refused*, the Court had before it a Colorado agreed judgment settling title to certain land owned by a partnership between the various partners. Some of the lands involved were in Texas. The Texas

Court enforced the determination of title by the Colorado Court on the ground that the Colorado Court was determining the validity and effect of a contract entered into by the parties (similarly to whether the deed by Louis Allis, Jr. to Western Farms, Ltd. was valid and effective as asserted by Petitioner) and not attempting to determine naked title to Texas real estate. The Court used the following language at page 605:

> "However, the Colorado decree did have the effect of judicially determining that Milner had made a valid contract with Schaefer and Lewis under the terms of which Schaefer and Lewis were entitled to receive the Texas property belonging to the partnership. Milner had invoked the jurisdiction of the Colorado court. It had jurisdiction of all the parties and its judgment is binding and operative under the rules of res judicata and estoppel by judgment."

These cases, cited in footnote 7 to the opinion by the Court of Appeals, reflect that the Court of Appeals analysis of *McElreath* v. *McElreath, supra,* was accurate. And see *Baughan* v. *Goodwin,* 162 S.W. 2d 732 (Tex. Civ. App. 1942) *writ refused, want of merit.*

Even as described in Petitioner's brief, the cases of *Holt v. Guerguin,* 106 Tex. 185 (1914), 163 S.W. 10, and *Carmichael* v. *Delta Drilling Co.,* 243 S.W. 2d 458 (Tex. Civ. App. 1951), *error refused,* do not show that the public policy of the State of Texas is contrary to the holding of the Court of Appeals below and a read-

ing of these cases show that they are wholly irrelevant to this argument.

CONCLUSIONS

The questions raised by Petitioner have no national interest, and indeed affect only the private rights between the parties. Petitioner has shown no special or important reasons for the granting of her petition for certiorari. Perhaps the most compelling reason for not granting the Writ of Certiorari is that the opinion of Court of Appeals for the Fifth Circuit is correct and correctly applies Texas law as a matter of comity to a Nevada judgment.

Although it is Respondent's position that the judgment of the Nevada Court is entitled to full faith and credit under the United States Constitution, neither the Court of Appeals nor the District Court felt it necessary to reach this position, for each held that as a matter of comity under Texas law the judgment would be given controlling effect by the Texas courts.

For these reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this .....day of ....., 1967, I served the foregoing Brief on Mr. Allen Butler, 2424 First National Bank Building, Dallas, Texas 75202 by depositing a copy thereof in the United States mail with proper postage affixed.

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